Application No. 10/699,358
Response dated: August 30, 2004
Reply to Office Action of May 4, 2004

REMARKS/ARGUMENTS

Double Patenting

Claims 1-3 stand rejected under the judicially created doctrine of obviousness-type double patenting as being unpatantable over Claim 1 of U.S. Patent No. 6,319,471. Applicants' respectively traverse this rejection.

As set forth in *MPEP* Section 804, "The doctrine of double patenting seeks to prevent the unjustified extension of patent exclusivity beyond the term of a patent." In the same section as set forth in *In re Van Ormeson*, 686, F.2d 937, 214, USPQ 761 (CCPA 1982), "Double patenting results when the right to exclude granted by a first patent is unjustly extended by the grant of a later issued patent or patents."

However, in the present situation the instant application claims the benefit of priority of Application Number 07/912,973 which matured into U.S. Patent No. 6,319,471-B1. Thus the term of the U.S. 6,319,471-B1 patent, because of its original 1992 filing date is 17 years from its grant date of November 20, 2001 (the longer term), *.i.e.*, November 20, 2018. The term for the instant application is twenty (20) years from the filing date of the first priority application which is July 10, 2012. In other words, any patent to grant on the instant application will expire over six years earlier than the 6,319,471 patent by virtue of the new patent term rules absent any patent term extension. Thus any terminal disclaimer would appear to be moot.

Claim Rejections, 35 USC § 103

Claims 1-3 stand rejected under 35 USC 103(a) as being unpatentable over U.S. Patent No. 4,968,295 to Neumann. Applicants respectively traverse this rejection.

Applicants' Claim 1 claims "a blood component yield predictor" and "means for calibrating such yield predictor to a blood counter" to adjust the predicted yield value and the blood component yield is based on said adjusted predicted yield value.

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Neumann, in contrast, uses flow rate input to adjust centrifuge speed so that the volume ratios of the output blood flow fractions to the full blood input remains constant. Neumann discloses no component yield predictor. Thus Neumann does not disclose providing component yield such as a platelet yield but rather discloses maintaining ratio of flows or volumes of flow. Neumann's algorithms refer to plasma flow, cell flow, full blood flow and anticoagulant flow and relates such flows to the centrifuge speed.

As to Applicants' claims, Neumann not only does not disclose the yield predictor but it also does not disclose means for calibrating the blood component yield predictor to a yield counter. Neumann also does not disclose the blood component yield predictor as set forth in Claim 3.

Newman also does not make obvious the addition of a blood component yield predictor and calibrating means. Such items are totally missing from Newman and there is no teaching in Newman of adding such items. If the Examiner persists in this rejection, Applicants ask that Examiner provide evidence that shows it obvious to substitute a flow process control with a device for predicting and adjusting component yield.

In view of the remarks above, Applicants ask the Examiner to reconsider her rejection under 35 U.S.C. 103(a).

If the Examiner has further questions or concerns, she is invited to call the undersigned attorney at (303) 231-4132; and Applicant respectfully requests that a timely Notice of Allowance be issued in this case.

Respectfully submitted,

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